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in every law school where the subject is taught and in the library of every specialist in the field. The task of "articulating the major premises" of our law of future interests is now before us, and no one in the country is better qualified to undertake it than Mr. Kales. M. O. H.

JOSEPH H. CHOATE: *NEW ENGLANDER, NEW YORKER, LAWYER, AMBASSADOR*. By Theron G. Strong. New York: Dodd, Mead and Company. 1917.

The author frankly admits that he has not written a complete biography, but rather a sketch of Choate's public career, based largely on personal acquaintance with him, and on newspaper clippings. In this way much material that might have been lost has been preserved in permanent form, and the result is an amusing book.

Choate was a graduate of the Harvard Law School in the class of 1854, and from 1896 to 1904 was president of the Harvard Law School Association. He was always a loyal friend of the School, and for many years one of the most distinguished of the men trained here. He delighted to recall to the alumni the old days before the case system, in "the golden age." Unfortunately, Mr. Strong's book adds little to our knowledge of that time. "I told him I wanted to get some facts concerning his life at the Harvard Law School. He replied, 'There was nothing of interest there; all we had to do was to go to Holworthy once a day and wear out the seat of our trousers.'"¹ There must be some error here. Choate's room was in Holworthy. Did he get his whole legal education in his room, like the apocryphal student who arrived at Property I, at eleven minutes past the hour, and finding the door locked, wrathfully foreswore all lectures, worked up his courses himself, and won a straight A?

The chapter entitled "The Lawyer" is much the best of the four, and every practitioner will find it enjoyable reading. It contains many hints upon what might be called the craftsmanship of our profession. Young surgeons are in the habit of taking an occasional vacation which is spent in some hospital watching a master-carver at work. Lawyers find little opportunity for such apprenticeship, and perhaps the best substitute is extensive reading of legal biography such as this book. The author has wisely interspersed among the famous trials of Choate's practice, numerous little court-room clashes, so that we watch the advocate from day to day.

"I obtained my knowledge," he said, "from reading at home and fighting in the Courts — principally fighting in the Courts." The chapter is full of fights and good stories and tricks of the trade. Too many tricks, indeed! We are left with a suspicion that Choate's legal victories were sometimes obtained not by the elucidation of the truth, but by making the opposing witness or counsel look like a fool. The plaintiff in a seduction case had made the acquaintance of Choate's client when he assisted her to rise from an icy sidewalk. Choate won "by sheer good humor," as Mr. Strong calls it, getting the laugh on the plaintiff by referring to her as "a fallen woman." After discrediting the testimony of a noted art critic, Clarence Cook, Choate "turned upon him and shaking a quivering forefinger at him quoted in dramatic emphasis: 'False, fleeting, perjured Clarence.'" The famous cross-examination of Russell Sage not only took an unfair advantage of a man who could not hit back, but was hardly a search for relevant testimony at all.

Choate was reluctant to retire because "he did not know where so much fun

¹ Strong, *op. cit.*, 22, 23. Compare the account of the School under Parsons in Choate's Address at the Langdell Dinner of the Harvard Law School Association, 1895.

was to be found as trying cases in the Courts." He liked to resume a trial after lunch and "have some more fun with the opposing counsel." It is good to find a man who got such thorough enjoyment from his work, but unbidden there springs to mind Bentham's reproach that legal proceedings are conducted like a game — a game played by professionals, at that.

Although Choate gained his renown as a jury lawyer, he won a large number of very important cases before appellate courts. Unfortunately Mr. Strong misstates the titles of several cases and omits almost all references to the Reports, so that the interested reader is left nearly helpless. Among Choate's victories in the United States Supreme Court were *In re Neagle*,² which established a novel point, the implied power of the federal government to protect its judges from attack; *United States v. Stanford*,³ which saved Leland Stanford's millions for his university; *Canada Southern v. Gebhard*,⁴ involving conflict of laws; and *Pollock v. Farmers' Loan and Trust Co.*,⁵ which overthrew the Income Tax Act of 1894.

The Income Tax Cases were a temporary victory for private property over forces which have since returned to the assault with redoubled vigor and bitterness. From any point of view the situation was extremely grave. Choate's old partner, Charles F. Southmayd, who had retired from practice at sixty, ten years before, because he feared that if he continued he might make a mistake, was so aroused by this iniquitous attack on property,⁶ that he volunteered to prepare Choate's brief. Did Southmayd make his mistake after all? Choate was opposed by James C. Carter, his lifelong rival and friend.⁷ After Carter's admirable discussion of the methods of taxation⁸ and his solemn close, urging respect for the discretion of Congress, Choate opened his argument by comparing Carter to Jupiter thundering all-around the sky and himself to Mercury coming out from his hiding-place and looking about to see how much damage had been done.⁹ And yet he stated later, "I have felt the responsibility of this case as I never felt one before and never expect to again."

Carter put his finger on the flaw in Choate's character when he said, "There was lacking in his make-up the capacity for moral indignation."¹⁰ For instance, defects in the law do not seem to have disturbed Choate. Perhaps they made the game more interesting. A great lawyer is possibly justified in aiding his client to crawl through any hole in the law he can find; Choate seems to have found a very small hole on one occasion;¹¹ but a great lawyer, as Mr. Brandeis once remarked, ought to make it his business as a servant of the public to go to the legislature afterwards and get that hole stopped up. Choate certainly did not acquire a prominence in such work commensurate with his great legal abilities. He could contentedly describe law as "a careful and exact science which makes void the part where fault is and preserves the rest, as it has been doing for centuries."¹² (Imprisonment for debt continues to exist in New York.) Again, Choate was a leading court lawyer at a time when the abler members of the bar were rapidly shutting themselves up in their offices, leaving trial-work for the most part to inferior men. One wishes that Choate had done something to stem the tide, had, for instance, induced

² 135 U. S. 1, 20.

³ 161 U. S. 412.

⁴ 109 U. S. 527.

⁵ 157 U. S. 429, 532; mistakenly cited on page 226 of Strong's book.

⁶ On page 225 of Mr. Strong's book he reports Mr. Choate as arguing in the Income Tax Cases, "I thought that the fundamental object of all civilized government was the preservation of the right of private property." In the official report it is "one of the fundamental objects." What did Choate really think on this point?

⁷ Choate and Carter were also opposed in two interesting cases of expulsion from an unincorporated association. *Hutchinson v. Lawrence*, 20 How. Pr. 38 (N. Y. Stock Exchange); *Loubat v. LeRoy*, 15 Abb. N. C. 1, 40 Hun 546 (Union Club).

⁸ 157 U. S., 513.

⁹ Strong, *op. cit.*, p. 222.

¹⁰ Strong, *op. cit.*, 62.

¹¹ Strong, *op. cit.*, 153.

¹² Strong, *op. cit.*, 134.

a group of the best lawyers of the succeeding generation to join him as specialists in advocacy.

It must be remembered, however, that the last word on Choate has not yet been said. A fuller account of his public services may show that the impression left by Mr. Strong's book is incorrect. Indeed, the non-legal portions of the book are very unsatisfactory. They are little more than a string of long extracts from after-dinner speeches, which do not bear warming over much better than the dinners. A few after-dinner speeches leave any one ready for sleep. It is unfortunate that so much is made by Mr. Strong of Choate's victorious cases, and so little of his constructive charitable work, or of his achievements as chairman of the American Delegates to the Second Hague Conference. Mr. Strong reduces this event, perhaps the greatest in Choate's life, to a paragraph of newspaper gossip.¹³ The creation of the International Court of Prize Appeals and the Court of Arbitral Justice is not even mentioned, nor the manner in which Choate "was able to adjust apparently irreconcilable difficulties" between England and Germany.¹⁴ Choate's achievements at the Hague have been hidden but not obliterated by the conflict which he lived long enough to take part in as vigorously as he was able, and his plans for international courts may one day become a living reality.

Z. C., JR.

GUIDE TO THE LAW AND LITERATURE OF ARGENTINA, BRAZIL, AND CHILE.

By Edwin M. Borchard. Washington Government Printing Office. 1917. pp. 523.

Increased commercial intercourse with South America has caused us in recent years to modify our traditional picture of South American countries as places where revolutions and adventurous dictators leave little room for legal order or other characteristics of civilized life. But even those who have kept more or less in touch with the civilization of South America will be surprised by the astonishing wealth of legal literature described in this volume. Professor Borchard has gone at his task with admirable thoroughness, and has produced a most convenient guide book for those who wish to avail themselves of the legal thought and experience of our southern neighbors.

The arrangement of the information for each of the three countries treated in this volume follows the model set in Professor Borchard's "Guide to the Law and Legal Literature of Germany." After a general historical and bibliographic introduction, information is given as to legislative and judicial reports, general works in law and legal history, the civil codes, commercial law, judicial organization and civil procedure, criminal law and procedure, constitutional, administrative, military, ecclesiastical, and public and private international law. Each of these heads contains numerous special topics, but under the heading of administrative law we have an unusual wealth of material bearing on matters of public law, such as immigration, public lands, mining, railroads, shipping, labor, public hygiene, education, taxation, etc. The description of the various codes, gives us in each case an admirable conspectus of the history, contents, and the various expositions, commentaries, and monographs on special topics. Glossaries of Spanish and Portuguese terms increase the availability of this vast amount of bibliographic information.

The author states that the threefold aim of this guide has been: "first, to furnish the lawyer and the student of comparative law with information as to the institutions and literature of the public and private law of the countries

¹³ Strong, *op. cit.*, 98-99.

¹⁴ J. B. Scott, Introduction to CHOATE'S THE TWO HAGUE CONFERENCES. See also J. B. SCOTT, AMERICAN ADDRESSES AT THE SECOND HAGUE CONFERENCE, for Choate's arguments in favor of international courts and arbitration.